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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAVID B. NEWMAN and IRA F/B/O DAVID  
NEWMAN-PERSHING LLC as Custodian, on  
behalf of themselves and all Others Similarly  
Situating, and Derivatively on behalf of FM LOW  
VOLATILITY FUND, L.P.,

C.A. No: 08-11215

Plaintiffs,

vs.

FAMILY MANAGEMENT CORPORATION,  
SEYMOUR W. ZISES, ANDREA L. TESSLER,  
ANDOVER ASSOCIATES LLC I, BEACON  
ASSOCIATES LLC I, BEACON ASSOCIATES  
MANAGEMENT CORP., BEACON/ANDOVER  
GROUP, MAXAM ABSOLUTE RETURN FUND,  
LP, MAXAM CAPITAL MANAGEMENT LLC,  
FULVIO & ASSOCIATES, LLP,

Defendants,

and FM LOW VOLATILITY FUND, L.P.,

Nominal Defendants.

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ELECTRONICALLY FILED  
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DATE FILED: 3-3-09

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE**, that upon the annexed Declaration of Gregory M. Nespole, Memorandum of Law and Proposed Order, Plaintiff David B. Newman, individually and as owner of his retirement account, IRA FBO David Newman Pershing LLC as Custodian (together, "Movant") will move this Court located at the Courthouse, 500 Pearl Street, New York, New York 10007, on February 23, 2009, or as soon thereafter as counsel may be heard for an Order pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange Act") for his appointment to serve as Lead Plaintiff on behalf of all persons, other

than defendants, who invested in the FM Low Volatility Fund, L.P. (the "Fund") from April 8, 2008, until the present (the "Class"); and for the approval of Movant's choice of Wolf Haldenstein Adler Freeman & Herz LLP as Lead Counsel.

**PLEASE TAKE FURTHER NOTICE**, that Movant, as the proposed Lead Plaintiff for the Class, has timely filed his motion and, pursuant to the PSLRA, is believed to constitute the investor with the largest financial interest in the outcome of the case for the Class, and is otherwise the most adequate lead plaintiff. Movant satisfies the requirements of the PSLRA and Rule 23 of the Federal Rules of Civil Procedure in that his claims are typical of the claims of the Class, and he will fairly and adequately represent the interests of the Class. Movant's choice of counsel should be accepted by this Court because his selected counsel is a nationally recognized firm with extensive experience and expertise in securities fraud and other class actions.

Dated: February 23, 2009  
New York, New York

Respectfully submitted,

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**

By: \_\_\_\_\_ /S/  
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Demet Basar  
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**Proposed Lead Counsel**

*Endorsement  
I wanted  
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approach  
So ended  
V. Sand  
3/3/09*